



INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-908

Certain Soft-Edged Trampolines and Components Thereof

Notice of Commission Determination to Review

the Final Initial Determination in Part;

Schedule for Filing Written Submissions on the Issues

under Review and on Remedy, Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the final initial determination issued by the presiding administrative law judge ("ALJ") in the above-captioned investigation on December 5, 2014. The Commission requests certain briefing from the parties on the issues under review, as indicated in this notice. The Commission also requests briefing from the parties and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3438. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The

public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 30, 2014, based on a complaint filed by of Springfree Trampoline, Inc. of Markham, Canada, Springfree Trampoline USA Inc. of Markham, Canada, and Spring Free Limited Partnership of Markham, Canada (collectively, "Springfree"). 79 Fed. Reg. 4956, 4956 (Jan. 30, 2014). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation, sale for importation, or sale within the United States after importation of certain soft-edged trampolines and components thereof by reason of infringement of one or more of claims 1 and 13 of U.S. Patent No. 6,319,174 (the "'174 patent"). *Id.* The notice of investigation names Vuly Trampolines Pty. Ltd. of Brisbane, Australia ("Vuly") as the sole respondent. *Id.* at 4957. The Office of Unfair Import Investigations did not participate in the investigation. *Id.*

On December 5, 2014, the ALJ issued a final ID finding no violation of section 337. The ALJ found that Vuly's accused products infringe claims 1 and 13 of the '174 patent. The ALJ found that Springfree's alleged domestic industry products practice claim 13, but found that Springfree failed to satisfy the economic prong of the domestic industry requirement. The ALJ further found that claim 1 was not shown to be invalid, but found that claim 13 is invalid as anticipated by the prior art. On December 18, 2014, the ALJ issued a recommended determination ("RD") on remedy and bonding. The ALJ recommended that, if the Commission finds a section 337 violation, a limited exclusion order should issue, with an exception for replacement, repair, and warranty parts. The ALJ recommended that the bond rate be set at zero

percent.

On December 22, 2014, Springfree filed a petition for review of the ALJ's construction of the claim term "first retaining means" in claim 1 and the ALJ's findings with respect to domestic industry and anticipation of claim 13. The same day, Vuly filed a contingent petition for review of nearly all the remaining determinations by the ALJ in the event the Commission determines to review the ID. On January 2, 2015, the parties filed responses to the petitions. The Commission did not receive any post-RD public interest comments from the parties or the public.

Having examined the record of this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review the ALJ's determination of no violation. Specifically, the Commission has determined to review (1) the ALJ's construction of "flexible mat," "first retaining means," and "flexible elongated rod"; (2) the ALJ's findings of infringement of claim 1 and 13; (3) the ALJ's findings regarding the technical prong of the domestic industry requirement with respect to claims 1 and 13; (4) the ALJ's findings regarding validity with respect to claims 1 and 13; and (5) the ALJ's finding regarding the economic prong of the domestic industry requirement.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the existing evidentiary record. In connection with its review, the Commission requests responses to the following questions only.

1. What is the plain and ordinary meaning of "flexible mat"? Please discuss whether this limitation, based on its plain and ordinary meaning, is met by the accused products, the alleged domestic industry products, and the prior art.
2. Please identify the structures disclosed in the '174 patent corresponding to the

claimed function of the “first retaining means” limitation. Discuss the relevance, if any, of *Micro Chemical, Inc. v. Great Plains Chemical Co.*, 194 F.3d 1250 (Fed. Cir. 1999) and *Ishida Co. v. Taylor*, 221 F.3d 1310 (Fed. Cir. 2000). Please discuss how your response affects the analyses with respect to infringement, the technical prong of the domestic industry requirement, and validity.

3. What evidence in the record shows that Springfree’s alleged domestic industry investment or employment activities are significant in the context of the industry in question, Springfree’s relative size, the article of commerce, and the realities of the marketplace?
4. With respect to Springfree’s alleged domestic industry products, how do Springfree’s domestic industry investments in plant and equipment and/or employment of labor and capital compare to its foreign investments and/or employment? What share of the overall cost of manufacturing and installation of a Springfree trampoline is accounted for by installation service costs in the United States? Does this information support a finding that Springfree’s domestic activities are significant?

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for

consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 Fed. Reg. 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on all of the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant Springfree is

also requested to submit proposed remedial orders for the Commission's consideration.

Springfree is also requested to state the date that the asserted patent expires and the HTSUS numbers under which the accused products are imported, and provide identification information for all known importers of the subject articles. Initial written submissions and proposed remedial orders must be filed no later than close of business on Thursday, February 19, 2015. Initial written submissions by the parties shall be no more than 40 pages, excluding any exhibits. Reply submissions must be filed no later than the close of business on Monday, March 2, 2015. Reply submissions by the parties shall be no more than 20 pages, excluding any exhibits. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-908") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All

nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

Lisa R. Barton

Secretary to the Commission

Issued: February 5, 2015

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